

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

DIVISION: 6  
HON. THOMAS B. LINDBERG  
CASE NO. P1300CR20081339

JEANNE HICKS, CLERK  
By: Lilly Miller, Deputy Clerk  
DATE: May 11, 2010

**FILED**  
DATE: May 11, 2010  
12:05 O'Clock P.M.  
JEANNE HICKS, CLERK  
BY: Lilly Miller  
Deputy

**TITLE:**

STATE OF ARIZONA,

Plaintiff,

vs.

**COUNSEL:**

Yavapai County Attorney (e)  
Joseph Butner / Jeffrey Paupore  
(For Plaintiff)

STEVEN CARROLL DEMOCKER,

Defendant.

John Sears (e)  
and  
Larry Hammond / Anne Chapman  
OSBORN MALEDON, P.A.  
2929 North Central Avenue, 21<sup>st</sup> Floor  
Phoenix, AZ 85012  
(For Defendant)

**HEARING ON:**  
Pending Motions

**NATURE OF PROCEEDINGS**

**COURT REPORTER**  
Lisa Chaney

**START TIME:** 10:02 a.m.

**APPEARANCES:** Joseph Butner, Co-Counsel for the State  
Jeffrey Paupore, Co-Counsel for the State  
Steven DeMocker, Defendant (in custody)  
John Sears, Co-Counsel for Defendant  
Anne Chapman, Co-Counsel for Defendant

The Court notes that the time is set for a hearing on pending motions. The Court discusses jurors [REDACTED] (on seating chart) and [REDACTED]. The Parties are given copies of the emails regarding [REDACTED] and [REDACTED]. Counsel Sears does not object to having juror [REDACTED] excused and replaced with another. Counsel Paupore would not object to excusing juror [REDACTED] also. Counsel Paupore discusses the list of jurors that will be addressed tomorrow and the next few days and notes that some of the upcoming jurors may be problematic, as they may be excused for hardship or cause. Counsel Sears discusses the Parties' efforts to meet and confer regarding the juror lists. The Court **ORDERS** excusing juror [REDACTED].

The Court notes that it just received a motion to strike certain jurors as well as a motion to preclude testimony of Eric Gilkerson and John Hoang. The Court further notes that the motion regarding an alternative testimonial location for Alex Knapp is still *under advisement*. Counsel Butner and Counsel Sears discuss the issue of Alex Knapp's testimony and his deposition. Counsel Butner is directed to speak to Alex Knapp's mother regarding her position on the issue.

The Court also believes that the issue of Mr. Calmbach's testimony is still *under advisement* as of April 28<sup>th</sup>, but the issue may be taken up today by the Defendant's motion to preclude late disclosed evidence from the State's 59th through 62nd disclosures.

Further discussion ensues regarding juror [REDACTED] and his transportation issues. The Court directs that [REDACTED] be put on the "call back" list by the Jury Commissioner.

Counsel Chapman discusses what motions are pending.

Counsel Sears and Counsel Butner discuss the issue of potential witness Jana Johnson and whether or not she can identify the Defendant as the person who rode by her home on the night in question. Counsel Sears may be filing a Dessureault motion on that issue.

Counsel Chapman and Counsel Butner present argument on the Defendant's motion to preclude the State's computer forensic experts and reports regarding internet searches, filed May 3<sup>rd</sup>. Counsel Chapman also moves to preclude Detective Lindvay from testifying regarding the research on internet searches conducted by Detective Page.

For the reasons as stated on the record, the State may not call Detective Page as a witness before June in order to give the Defense a chance of having their experts examine the En Case case files. The Court declines to preclude the State's computer forensic experts; however, the Court does believe that there has been a discovery violation. The Court will not preclude Detective Page from testifying about the two internet searches that can be dated. The Court will preclude testimony regarding those searches that the State is unable to date. With regard to Detective Lindvay, the Court will not preclude him from testifying regarding any examination he did on the computer or about how En Case generally works; however he will not be allowed to comment on what Detective Page did or the results of Detective Page's report. The Court **ORDERS** the State to specifically identify the two internet searches that can be dated prior to opening statements.

Counsel Chapman requests that the Defense be notified as to when the Detective Page and the Detective Lindvay interviews will be completed. The Court directs the Parties to discuss when interviews will be completed and advise the Court of the status of that issue tomorrow morning.

Counsel Chapman and Counsel Butner present argument on the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 1: interviews and investigation of Verde Valley jail [witness Michael Calmbach].

For the reasons as stated on the record, the Court will preclude Mr. Calmbach (*under advisement ruling*).

Counsel Chapman, Counsel Butner, and Counsel Sears present argument on the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 2: additional request for opinion from Eric Gilkerson and late disclosed Gilkerson exhibit.

For the reasons as stated on the record, the Court declines to preclude Mr. Gilkerson from testifying, but the Court intends to give a Willits instruction because of the lack of preservation of the location for the shoe prints. Section 2 of the motion to preclude is **DENIED**.

With regard to the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 3: forensically enhanced tire tracks CD, the Court will consider

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that the issue has been waived by the State, as they do not intend to use that information.

Counsel Chapman and Counsel Butner present argument on the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 4: Mr. Democker's statements.

The Court **DENIES** section 4 of the motion to preclude re: Mr. Democker's statements.

Counsel Chapman and Counsel Butner present argument on the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 11: jail calls from May of 2009.

The Court **GRANTS** section 11 of the motion to preclude, in accordance with the Court's previous order.

The Court **GRANTS** section 5 of the motion to preclude re: late disclosed interviews, as the State has waived that issue.

Counsel Chapman and Counsel Butner present argument on the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 6: Sorenson.

With regard to section 6: Sorenson, the Court will consider what sanction to impose, which may include a reimbursement of the Defense expert's costs. The Court takes the matter *under advisement*.

Counsel Chapman advises the Court that there is no longer an issue with respect to section 7 of the motion to preclude re: evidence related to DR10-014516.

Counsel Chapman proposes holding off on section 8 of the motion to preclude re: DPS computer forensics report until the State identifies which specific searches he believes Detective Page can identify by date.

Court directs Defense Counsel to provide the Court with information regarding the Defense expert's expense involved in going to Sorenson and being present for the testing.

Counsel Chapman, Counsel Sears, and Counsel Butner present argument on the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 9: cell tower information.

The Court **DENIES** the request for sanctions as it relates to section 9: cell tower information.

Counsel Chapman and Counsel Butner present argument on the Defendant's motion to preclude late disclosed evidence, witnesses and exhibits from the State's 59th through 62nd disclosures, section 10: bank records for Carol Kennedy.

The Court **does not find** that there is a need for sanctions with regard to those bank records, given the State's explanation.

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Counsel Chapman discusses section 12 of the motion to preclude, re: Sorenson request.

The Court concludes that the issue in section 12 of the motion to preclude is moot.

Counsel Chapman believes that the 15.6(d) motion to extend time for additional disclosure would be addressed today. The State would like an opportunity to file a response to the 15.6(d) motion. Counsel Chapman and Counsel Butner present argument on the motion. The Court will give the State additional time to respond to that motion and directs the State to file their response by **Monday, May 17, 2010**.

Court will have a draft of the preliminary jury instructions for Counsel by Friday.

Regarding the motion to preclude testimony of Gilkerson and Hoang, which was filed today, the State is given until **Wednesday, May 19, 2010**, to file a response. The Court authorizes the State to respond to the Defendant's motion to strike jurors. Counsel for State is directed to file a response to that motion by **Friday, May 14, 2010**.

The Court anticipates issuing an order directing the Jury Commissioner to call in additional jurors for next week, depending on whether or not the Court grants the Defendant's motion to strike jurors. Counsel Sears hopes to meet with Counsel Paupore to see whether there are any upcoming jurors the Parties can agree to strike. The Court invites the attorneys to use the Courtroom during the lunch recess for that meeting.

**END TIME: 12:05 p.m.**

cc: Division 6  
Victim Services (e)  
Dean Trebesch (Contract Administrator, PD) (e)  
YCSO - Detention (e)  
Christopher DuPont, Trautman DuPont PLC, 245 W. Roosevelt, Ste. A, Phoenix, AZ 85003, Counsel for Victims  
Charlotte and Katherine DeMocker  
John Napper (e) - Counsel for Renee Girard, witness  
Jury Commissioner